

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

JOSE A. RIVERA RAMOS

Plaintiff

v.

COMMISSIONER OF SOCIAL SECURITY

Defendants

CIVIL NO. 10-1220 (JAG)

MEMORANDUM AND ORDER

Pursuant to 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b) and Local Rule 72, a district court may refer dispositive motions to a United States magistrate judge for a report and recommendation. See Alamo Rodriguez v. Pfizer Pharmaceuticals, Inc., 286 F. Supp. 2d 144, 146 (D.P.R. 2003). The adversely affected party may "contest the [m]agistrate [j]udge's report and recommendation by filing objections 'within ten days of being served' with a copy of the order." United States v. Mercado Pagan, 286 F. Supp. 2d 231, 233 (D.P.R. 2003) (citing 28 U.S.C. § 636(b)(1)). If objections are timely filed, the district judge shall "make a *de novo* determination of those portions of the report or specified findings or recommendation to which [an] objection is made." Rivera-De-Leon v. Maxon Eng'g Servs., 283 F. Supp. 2d 550, 555 (D.P.R. 2003). It is well

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settled that a district court can "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." Alamo Rodriguez, 286 F. Supp. 2d at 146 (citing Templeman v. Chris Craft Corp., 770 F.2d 245, 247 (1st Cir. 1985)). However, if the affected party fails to timely file objections, the district court can assume that they have agreed to the magistrate judge's recommendation. Id.

In the case at bar no timely objection were filed to the Magistrate Judge's Report and Recommendation (Docket No. 16). Therefore, after a careful *de novo* review of the Magistrate Judge's exhaustive analysis of the facts and the applicable law, the Court hereby **ADOPTS** the Report and Recommendation and, accordingly, **VACATES** the Commissioner decision. The case is remanded to the agency for the taking of live testimony from a vocational expert regarding the impact of claimant's non-exertional physical limitations on the occupational base for medium work, in accordance with said Report and Recommendation. (Docket No. 16).

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 4th day of April, 2011.

S/ Jay A. García-Gregory
JAY A. GARCÍA-GREGORY
United States District Judge